



Republican
National
Committee

Counsel's Office

May 22, 2006

By Fax
Commission Secretary &
Rosemary C. Smith, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: The Republican National Committee's Comments on Advisory Opinion Request
2006-19.

Dear Ms. Smith:

The Republican National Committee ("RNC") writes to comment on the Los Angeles County Democratic Party Central Committee's ("LACDP") May 5, 2006 advisory opinion request. This request seeks guidance as to whether certain proposed communications would be considered "federal election activity" under the Federal Election Campaign Act of 1971, as amended ("FECA"), and the Commission's regulations. In particular, the LACDP asks whether certain telephone call scripts and a mail piece constitute "get-out-the-vote" ("GOTV") activity under 11 C.F.R. § 100.24(a)(3). See AOR 2006-19. For the following reasons, the Commission should find that the LACDP's proposed communications do not constitute GOTV activity that is subject to federal regulation, but instead are nonfederal public communications exempt from regulation under 11 C.F.R. § 100.24(c).

The Commission expressed concern about an over-expansive reading of GOTV in issuing the initial final regulations governing federal election activity – and for good reason: "if GOTV is defined too broadly, the effect of the regulations would be to federalize a vast percentage of ordinary campaign activity."¹ Prohibition and Excessive Contributions: Nonfederal Funds or Soft Money, 67 Fed. Reg. 49067 (July 29, 2002)

¹ Yet the Commission's Draft Advisory Opinion 2006-19 is based upon just such an overly broad reading of GOTV. The draft advisory opinion assumes, without analysis or explanation, that the LACDP's activity constitutes GOTV, and as such is based upon a flawed premise. Draft Advisory Opinion 2006-19, p. 1 (May 18, 2006) ("We are responding to your advisory opinion request on behalf of the [LACDP] concerning the application of [FECA] and Commission regulations to *certain get-out-the-vote activities LACDP is planning to undertake in connection with an election to be held June 6, 2006.*" (emphasis added)).

(emphasis added). It was with this express concern that the Commission finalized the original regulation governing GOTV activity, which states:

Get-out-the-vote activity means contacting registered voters by telephone, in person, or by some other individualized means, *to assist them in engaging in the act of voting...*[GOTV] activity includes, but is not limited to the following:

- (i) Providing to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places; and
- (ii) Offering to transport or actually transporting voters to the polls.

11 C.F.R. § 100.24(a)(3) (emphasis added).

The regulation's plain language makes clear that GOTV activity is activity that is targeted at individual voters and that helps move them to the voting booths. The Commission underscored this very point in its explanation and justification accompanying the final regulation, stating:

GOTV has a very particular purpose: assisting registered voters to take any and all necessary steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means. *The Commission understands this purpose to be narrower and more specific than the broader purposes of generally increasing public support for a candidate or decreasing public support for an opposing candidate.* 67 Fed. Reg. 49067 (emphasis added).

None of the LACDP's proposed communications – two telephone scripts and one mail piece – fall within the scope of GOTV activity. First, LACDP's request states that the "targeted period" for the mailings and the telephone calls would be "four to fifteen days before the June 6 election date." AO Request 2006-19 at 2. Thus, as an initial matter the communications would fall outside of the 72 pre-election period the regulation sets as the relevant GOTV time period. See 11 C.F.R. § 100.24(a)(3)(i). Second, the LACDP's proposed communications only mention the election's date; no specific information regarding polling place locations or hours of operation are mentioned. Once again, the example of GOTV activity provided by the regulation is clear (and conjunctive): "Providing...information such as the date of the election, the times when polling places are open, *and* the location of particular polling places." 11 C.F.R. § 100.24(a)(3)(i) (emphasis added). Finally, the LACDP's proposed communications make absolutely no offer to, nor do they imply in any way that the LACDP will, assist voters in getting to the polls. See 11 C.F.R. § 100.24(a)(3)(ii). Put simply, the LACDP's proposed communications do not meet the Commission's definition of GOTV activity.

The LACDP's proposed communications, however, do fit neatly into one of section 100.24's exceptions to federal election activity. See 11 C.F.R. § 100.24(c)(1). This exception follows:

Federal election activity does not include any amount expended or disbursed by a State, district, or local committee of a political party for ...[a] public communication that refers solely to one or more clearly identified candidates for State or local office and that does not promote or support, or attack or oppose a clearly identified candidate for federal office[.]

11 C.F.R. § 100.24(c)(1).

The LACDP's proposed communications refer solely to nonfederal candidates, and do not mention or promote or support, or attack or oppose any federal candidate. Indeed, they are precisely the sort of local and state communications that this exception was intended to protect from federal regulation.

For the Commission to sweep such communications into "federal election activity" would be to embrace the "vast federalization of State and local activity" that the Commission has carefully avoided in the past. 67 Fed. Reg. 49067. The Commission should find LACDP's proposed communications to be nonfederal public communications exempt from federal regulation under 11 C.F.R. § 100.24(c)(1).

Respectfully submitted,



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Cc: The Honorable Michael E. Toner, Chairman
The Honorable Robert D. Lenhard, Vice Chairman
The Honorable David M. Mason, Commissioner
The Honorable Hans A. von Spakovsky, Commissioner
The Honorable Steven T. Walther, Commissioner
The Honorable Ellen L. Weintraub, Commissioner